

STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
DIVISION OF ENVIRONMENTAL HEALTH  
NewMarket Industrial Campus, Bldg 2 • PO Box 47820  
Olympia, Washington 98504-7820

April 26, 2005

Tom Locke, MD  
Chair, Washington State Board of Health  
Post Office Box 47990  
Olympia, Washington 98504

  
Dear Dr. Locke:

At your meeting on March 9, 2005, several members asked questions of the Department of Health relating to the on-site sewage systems proposed rules. This letter is our promised follow-up to those questions.

**Coordination with Environmental Protection Agency (EPA)/National Oceanic and Atmospheric Administration (NOAA) rules.** Mr. Crump asked us about the coordination of these rules with EPA and NOAA. To refresh your memory, Tom Eaton from EPA testified about the connection between the state's on-site requirements and the federal Coastal Zone Act Reauthorization Amendment (CZARA) requirements. CZARA requires in part that coastal states have enforceable policies to prevent pollution from on-site sewage disposal systems and other nonpoint sources. One of these enforceable policies must require that qualified individuals conduct the system inspections. Also, environmental issues such as nitrogen into marine waters associated with on-site systems must be part of the state program.

The state of Washington will not have an approved Coast Nonpoint Pollution Control Program if it fails to comply with the requirements of CZARA. I contacted Mr. Eaton as well as Department of Ecology, which is the agency responsible for this program, to determine what that means for the state. While EPA has the option of withholding some funding, I understand that EPA Headquarters in Washington, D.C. has made a national determination that no funding be withheld from states without an approved program.

The state's current and proposed rules allow homeowners to inspect their own systems. At least one local health jurisdiction (LHJ) has established a certification program for system inspectors and requires that inspections be performed by them. And, even though we know that in most cases a homeowner will opt to hire someone to do this work, this is not a viable option in many rural parts of the state.

Regarding nitrogen control, the proposed rules establish a discharge limit for nitrogen and the local health officer has the ability to require treatment for it if she or he finds it is a contaminant of concern. The local health officer has flexibility in making this finding as the rules are silent as to what criteria she or he must use.

**Transfer of records at time of sale.** Mr. Crump also asked us why we had not included a requirement that a seller provide all records of the on-site maintenance and repairs at the time of sale. We heard significant concerns from the public about this proposal. Some people were concerned that sellers would bear some kind of legal liability if they were missing records. Others feared sales would be delayed or lost while an exhaustive records search was underway. In the end, we decided that RCW 64.06.020 (copy enclosed), which requires residential property sellers to disclose certain information to buyers, including information about sewer/on-site sewage systems, was sufficient. However, we will be working with LHJs to develop educational materials for homeowners about the importance of keeping all records relating to their on-site systems.

**Local health officer's authority.** Mr. Crump also asked about the local health officer's authority for implementing these rules. As you know, the local health officer's authority is fairly complete. RCW 70.05.060 requires local boards of health, through the health officer or administrator to enforce rules of the State Board of Health. RCW 70.05.070 states in part that the local health officer shall *"enforce the public health statutes of the state, rules of the state board of health and the secretary of health, and all local health rules, regulations and ordinances within his or her jurisdiction including imposition of penalties..."*

Specifically relating to on-site sewage systems, RCW 70.05.072 gives the local health officer the authority to waive any on-site sewage system rules for a system with flows under 3,500 gallons per day. RCW 70.05.074 provides the local health officer with authority to issue or deny permits for these systems.

**Grandfathering.** Mr. Osaki asked us to clarify grandfathering, and we believe this relates to what is known as the "Vested Rights Doctrine." RCW 58.17.033 states that the land use ordinances in effect at the time a fully completed application for preliminary plat approval *is filed* will continue to apply to that subdivision. On-site system rules are land use ordinances because they exert a restraining or directing influence on the use of the land.

A regulation can extinguish a vested right if it is necessary to protect public health and safety. The Washington State courts have developed a three part test to determine if a regulation is exempt from the vested rights doctrine. It must 1) be reasonably necessary; 2) be substantially related to the harm it seeks to avoid or cure; and 3) regulate only those reasonably related to what the rule seeks to accomplish.

What this means is that if a developer files a completed preliminary plat today, the on-site rules in effect today will apply to that development, including the size of the lots, even if the

development does not begin until after the new rules have been adopted *unless* the rule, or a subset of the rules, are reasonably necessary to protect public health and safety. We would expect to meet that test for a rule for which there is no real option for public health protection, such as vertical separation.

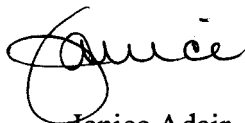
**Enforcement.** Mr. Tonasket asked us about the enforceability of the rules. The proposed rules establish minimum requirements for on-site systems to protect public health. By having those standards in rule, we are saying as a state, this is what we expect to ensure human sewage is properly disposed.

We know that enforcement is tricky - on-site systems are located on private property and the Washington State Constitution severely limits access to private land. This is an age-old issue that affects many state requirements. Every LHJ has had to work to find the most effective balance between technical assistance, homeowner education, and enforcement based on capacity, need, and local priorities. We believe this local control and flexibility is critical to the overall success of any on-site program.

**Unfunded mandates.** Mr. Tonasket questioned if these rules create an unfunded mandate for local governments. We heard questions from several fronts about the capacity of those counties with marine waters to do the planning proposed in the rule. Recognizing that additional resources would be necessary, we submitted a decision package to fund this effort. We should know its fate by the time the Board meets again in May. In addition, the Department of Ecology has a low interest loan program for LHJs so an LHJ can in turn loan money to homeowners to make needed repairs.

I'll look forward to seeing you at the May meeting. If any other questions arise between now and then, please let me know.

Sincerely,



Janice Adair  
Assistant Secretary

Enclosure

cc: Craig McLaughlin  
Bill White  
Maryanne Guichard  
Chris Townley  
Members, State Board of Health

STRUCTURAL PEST INSPECTORS. THE PROSPECTIVE BUYER AND SELLER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR INSPECTIONS OF THE PROPERTY OR TO PROVIDE APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTION, DEFECTS OR WARRANTIES.

Seller . . . . is/ . . . . is not occupying the property.

### **I SELLER'S DISCLOSURES:**

\*If you answer "Yes" to a question with an asterisk (\*), please explain your answer and attach documents, if available and not otherwise publicly recorded. If necessary, use an attached sheet.

#### **1. TITLE**

☐ Yes      ☐ No      ☐ Don't know

A. Do you have legal authority to sell the property? If no, please explain.

☐ Yes      ☐ No      ☐ Don't know

\*B. Is title to the property subject to any of the following?

- (1) First right of refusal
- (2) Option
- (3) Lease or rental agreement
- (4) Life estate?

☐ Yes      ☐ No      ☐ Don't know

\*C. Are there any encroachments, boundary agreements, or boundary disputes?

☐ Yes      ☐ No      ☐ Don't know

\*D. Are there any rights of way, easements, or access limitations that may affect the Buyer's use of the property?

☐ Yes      ☐ No      ☐ Don't know

\*E. Are there any written agreements for joint maintenance of an easement or right of way?

☐ Yes      ☐ No      ☐ Don't know

\*F. Is there any study, survey project, or notice that would adversely affect the property?

☐ Yes      ☐ No      ☐ Don't know

\*G. Are there any pending or existing assessments against the property?

☐ Yes      ☐ No      ☐ Don't know

\*H. Are there any zoning violations, nonconforming uses, or any unusual restrictions on the property that would affect future construction or remodeling?

☐ Yes      ☐ No      ☐ Don't know

\*I. Is there a boundary

		know	survey for the property?
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*J. Are there any covenants, conditions, or restrictions which affect the property?

**2. WATER****A. Household Water**

(1) The source of water for the property is:

☐ Private or publicly owned water system

☐ Private well serving only the subject property .

.....

\*☐ Other water system

\*If shared, are there any written agreements?

<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know
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<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know
------------------------------	-----------------------------	-------------------------------------

\*(2) Is there an easement (recorded or unrecorded) for access to and/or maintenance of the water source?

<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know
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\*(3) Are there any known problems or repairs needed?

<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know
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(4) During your ownership, has the source provided an adequate year round supply of potable water? If no, please explain.

<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know
------------------------------	-----------------------------	-------------------------------------

\*(5) Are there any water treatment systems for the property? If yes, are they  
☐ Leased ☐ Owned

**B. Irrigation**

<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know
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(1) Are there any water rights for the property, such as a water right, permit, certificate, or claim?

<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know
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\*(a) If yes, have the water rights been used during the last five years?

<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know
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\*(b) If so, is the certificate available?

**C. Outdoor Sprinkler System**

<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know
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(1) Is there an outdoor sprinkler system for the property?

<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know
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(2) If yes, are there any defects in the system? . . .

☐ Yes      ☐ No      ☐ Don't know

....  
\*(3) If yes, is the  
sprinkler system  
connected to irrigation  
water?

### 3. SEWER/ON-SITE SEWAGE SYSTEM

A. The property is served  
by: ☐ Public sewer system,  
☐ On-site sewage system  
(including pipes, tanks,  
drainfields, and all other  
component parts) ☐ Other  
disposal system, please  
describe:

☐ Yes      ☐ No      ☐ Don't know

.....  
B. If public sewer system  
service is available to the  
property, is the house  
connected to the sewer  
main? If no, please explain.

☐ Yes      ☐ No      ☐ Don't know

.....  
C. Is the property subject to  
any sewage system fees or  
charges in addition to those  
covered in your regularly  
billed sewer or on-site  
sewage system maintenance  
service?

D. If the property is  
connected to an on-site  
sewage system:

☐ Yes      ☐ No      ☐ Don't know

\*(1) Was a permit issued  
for its construction, and  
was it approved by the  
local health department or  
district following its  
construction?

(2) When was it last  
pumped:

☐ Yes      ☐ No      ☐ Don't know

.....  
\*(3) Are there any defects  
in the operation of the on-  
site sewage system?

(4) When was it last  
inspected?

☐ Don't know

.....  
By Whom: .....

☐ Don't know

(5) For how many  
bedrooms was the on-site  
sewage system  
approved ?

..... bedrooms

☐ Yes      ☐ No      ☐ Don't know

E. Are all plumbing fixtures,  
including laundry drain,

connected to the sewer/on-site sewage system? If no, please explain: .....

☐ Yes    ☐ No    ☐ Don't know    \*F. Have there been any changes or repairs to the on-site sewage system?

☐ Yes    ☐ No    ☐ Don't know    G. Is the on-site sewage system, including the drainfield, located entirely within the boundaries of the property? If no, please explain.

.....

☐ Yes    ☐ No    ☐ Don't know    H. Does the on-site sewage system require monitoring and maintenance services more frequently than once a year? If yes, please explain.

.....

NOTICE: IF THIS RESIDENTIAL REAL PROPERTY DISCLOSURE STATEMENT IS BEING COMPLETED FOR NEW CONSTRUCTION WHICH HAS NEVER BEEN OCCUPIED, THE SELLER IS NOT REQUIRED TO COMPLETE THE QUESTIONS LISTED IN ITEM 4. STRUCTURAL OR ITEM 5. SYSTEMS AND FIXTURES

#### 4. STRUCTURAL

☐ Yes    ☐ No    ☐ Don't know    \*A. Has the roof leaked?

☐ Yes    ☐ No    ☐ Don't know    \*B. Has the basement flooded or leaked?

☐ Yes    ☐ No    ☐ Don't know    \*C. Have there been any conversions, additions, or remodeling?

☐ Yes    ☐ No    ☐ Don't know       \*(1) If yes, were all building permits obtained?

☐ Yes    ☐ No    ☐ Don't know       \*(2) If yes, were all final inspections obtained?

☐ Yes    ☐ No    ☐ Don't know    D. Do you know the age of the house? If yes, year of original construction:

.....

☐ Yes    ☐ No    ☐ Don't know    \*E. Has there been any settling, slippage, or sliding of the property or its improvements?

☐ Yes    ☐ No    ☐ Don't know    \*F. Are there any defects with the following: (If yes, please check applicable items and explain.)

<input type="checkbox"/> Foundations	<input type="checkbox"/> Decks	<input type="checkbox"/> Exterior Walls
<input type="checkbox"/> Chimneys	<input type="checkbox"/> Interior Walls	<input type="checkbox"/> Fire Alarm
<input type="checkbox"/> Doors	<input type="checkbox"/> Windows	<input type="checkbox"/> Patio
<input type="checkbox"/> Ceilings	<input type="checkbox"/> Slab Floors	<input type="checkbox"/> Driveways
<input type="checkbox"/> Pools	<input type="checkbox"/> Hot Tub	<input type="checkbox"/> Sauna
<input type="checkbox"/> Sidewalks	<input type="checkbox"/> Outbuildings	<input type="checkbox"/> Fireplaces
<input type="checkbox"/> Garage Floors	<input type="checkbox"/> Walkways	<input type="checkbox"/> Siding
<input type="checkbox"/> Other	<input type="checkbox"/> Wood Stoves	

☐ Yes    ☐ No    ☐ Don't know    \*G. Was a structural pest or "whole house" inspection done? If yes, when and by whom was the inspection completed? .....

☐ Yes    ☐ No    ☐ Don't know    H. During your ownership, has the property had any wood destroying organism or pest infestation?

☐ Yes    ☐ No    ☐ Don't know    I. Is the attic insulated?

☐ Yes    ☐ No    ☐ Don't know    J. Is the basement insulated?

##### 5. SYSTEMS AND FIXTURES

\*A. If any of the following systems or fixtures are included with the transfer, are there any defects? If yes, please explain.

<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	Electrical system, including wiring, switches, outlets, and service
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	Plumbing system, including pipes, faucets, fixtures, and toilets
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	Hot water tank
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	Garbage disposal
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	Appliances
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	Sump pump
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	Heating and cooling systems
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	Security system



know

☐ Owned ☐ Leased

Other .....

\*B. If any of the following fixtures or property is included with the transfer, are they leased? (If yes, please attach copy of lease.)

Security system .....

Tanks (type): .....

Satellite dish .....

Other: .....

☐ Yes      ☐ No      ☐ Don't know

☐ Yes      ☐ No      ☐ Don't know

☐ Yes      ☐ No      ☐ Don't know

## 6. COMMON INTERESTS

☐ Yes      ☐ No      ☐ Don't know

A. Is there a Home Owners' Association? Name of Association

.....

☐ Yes      ☐ No      ☐ Don't know

B. Are there regular periodic assessments:

\$... per ☐ Month ☐ Year

☐ Other .....

☐ Yes      ☐ No      ☐ Don't know

\*C. Are there any pending special assessments?

☐ Yes      ☐ No      ☐ Don't know

\*D. Are there any shared "common areas" or any joint maintenance agreements (facilities such as walls, fences, landscaping, pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)?

## 7. GENERAL

☐ Yes      ☐ No      ☐ Don't know

\*A. Have there been any drainage problems on the property?

☐ Yes      ☐ No      ☐ Don't know

\*B. Does the property contain fill material?

☐ Yes      ☐ No      ☐ Don't know

\*C. Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides?

☐ Yes      ☐ No      ☐ Don't know

D. Is the property in a designated flood plain?

☐ Yes      ☐ No      ☐ Don't

\*E. Are there any

		know	substances, materials, or products on the property that may be environmental concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, or contaminated soil or water ?
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*G. Has the property ever been used as an illegal drug manufacturing site?
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*H. Are there any radio towers in the area that may cause interference with telephone reception?
			<b>8. MANUFACTURED AND MOBILE HOMES</b>
			If the property includes a manufactured or mobile home,
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*A. Did you make any alterations to the home? If yes, please describe the alterations: .....
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*B. Did any previous owner make any alterations to the home? If yes, please describe the alterations: ....
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*C. If alterations were made, were permits or variances for these alterations obtained?

### 9. FULL DISCLOSURE BY SELLERS

<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	A. Other conditions or defects: *Are there any other existing material defects affecting the property that a prospective buyer should know about?
			B. Verification: The foregoing answers and attached explanations (if any) are complete and correct to the best of my/our knowledge and I/we have received a copy hereof. I/we authorize all of my/our real estate licensees, if any, to deliver a copy of this disclosure statement to other real estate licensees and all prospective buyers of the property.